

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DEREK WILSON AND JENNIFER  
WILSON**

**APPELLANTS,**

**v.  
AMERICAN FAMILY MUTUAL  
INSURANCE COMPANY**

**RESPONDENT.**

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DOCKET NUMBER WD77396

DATE: May 19, 2015

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Appeal From:

Buchanan County Circuit Court  
The Honorable Randall R. Jackson, Judge

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Appellate Judges:

Division Three: Victor C. Howard, Presiding Judge, James E. Welsh, Judge and Gary D. Witt,  
Judge

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Attorneys:

Joseph W. Elliott, St. Joseph, MO, for appellants.

Charles H. Stitt, Kansas City, MO, for respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DEREK WILSON AND JENNIFER  
WILSON,**

**APPELLANTS,**

**v.  
AMERICAN FAMILY MUTUAL  
INSURANCE COMPANY,**

**RESPONDENT.**

No. WD77396

Buchanan County

Before Division Three: Victor C. Howard, Presiding Judge, James E. Welsh, Judge and Gary D. Witt, Judge

Derek and Jennifer Wilson ("the Wilsons") purchased a "Gold Star" 100% replacement cost insurance policy (the "Policy") from American Family Mutual Insurance Company ("American Family") to insure their home, a historic farmhouse. After a fire completely destroyed the home, American Family informed the Wilsons that it would pay the face amount of the Policy of \$419,000 for the coverage on the dwelling, an amount that was substantially less than all bids to rebuild the home following the fire.

The Wilsons filed suit against American Family and its agent, Matt Thrasher ("Thrasher"), alleging negligent misrepresentation and breach of contract. The jury found for the Wilsons on their breach of contract claim and assessed damages in the amount of \$7,500, but found in favor of American Family on the negligent misrepresentation claim. Wilsons argued, *inter alia*, that the trial court erred in denying their motion for a new trial because evidence established that the Policy was ambiguous as a matter of law.

**REVERSED AND REMANDED**

Division Three holds:

(1) The Policy was marketed as a 100% replacement cost policy. The amount of coverage listed on the declarations page of the policy was established by a computer program which American Family required their agents to use when selling this Policy. The Policy also included a provision to increase the limit of the policy to 120% of the amount listed. "Replacement cost" is undefined in the Policy but is found to mean the total amount to repair or replace the damaged structure with like kind and quality materials. "Limit" is defined in the Policy as "the limit of liability or amount of insurance that applies for the coverage." A definition that contains within it the word that it is defining is circular and unhelpful. The terms "limit" and "replacement cost" are used interchangeably throughout the Policy. The Policy amount of \$419,000 was substantially less than the actual replacement cost of the structure, which was between \$570,000 and \$725,000.

(2) The Policy is ambiguous as a matter of law and the provision for an increased limit of 120% of the limit listed is illusory. The cause is remanded for a new trial.

Opinion by Gary D. Witt, Judge

May 19, 2015

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